IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 269 OF 2003

Smt. Lali alias Lalan
Vishram Forgent alias Lalan
Sanvordekar, age, housewife,
r/o House No.A-52, Bharatnagar,
grant Road, Mumbai.
Represented by her attorney
Shri Vidhyadhar Shankar Naik,
r/o Flat No.6, Leopan Appts.,
Pontemol, Curchorem, Goa. ... Petitioner.

Versus

Smt. Vidhya alias Shobha
Vilas Gurav, married,
age 35 years, r/o Ghanemorod
Xeldem, Quepem, Goa. ... Respondent.

Shri Sudesh Usgaokar,advocate for the petitioner.

CORAM : F. I. REBELLO, J.

DATE :17th July, 2003.

ORAL JUDGMENT

Rule. Heard forthwith.

The learned trial Court by the Order dated 15th February, 2003, has rejected the application for amendment by holding that the petitioner herein was unable to show any reason for not amending the plaint prior to the framing of the issues, as an application for injunction was dismissed on 20th April, 2002, and also considering the proviso to Order 6 Rule 17 of the C.P.C. as brought about by the Amending Act of 1999-2002.

2. Insofar as the proviso to Order 6 Rule 17 C.P.C. is concerned, it speaks of the trial and not the hearing. In

that light of the matter, it was within the jurisdiction of the Court to consider the application for amendment. The reason given for rejecting the amendment is that the petitioner ought to have carried out the amendment before framing the issues. The amendment if otherwise is necessary for the purpose of disposing of the suit has normally to be allowed, unless barred by limitation, displaces the cause of action, or changes the nature of the suit. The trial Court has not given any such reason for rejecting the application.

In the light of that, the Order of the trial Court clearly discloses error apparent on the face of the record and the Order dated 15th February, 2003, is set aside. Application Exh.28 is allowed. Rule made absolute accordingly with no order as to costs.

F. I. REBELLO, J.

mc.